

CENTER FOR DISABILITY ACCESS
Phyl Grace, Esq., SBN 171771
Russell Handy, Esq., SBN 195058
Dennis Price, Esq., SBN 279082
Khushpreet Mehton, Esq., SBN 276827
Mary Melton, Esq., SBN 164407
Mail: PO Box 262490
San Diego, CA 92196-2490
Delivery: 9845 Erma Road, Suite 300
San Diego, CA 92131
(858) 375-7385; (888) 422-5191 fax
phylg@potterhandy.com

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Scott Johnson,

Plaintiff,

v.

Jack M. Lapidos, in individual and
representative capacity as trustee of
The Elizabeth Ann Taisch Trust
dated March 10, 2000;
Eric Mankuta, in individual and
representative capacity as trustee of
The Elizabeth Ann Taisch Trust
dated March 10, 2000;
Steve Chao, in individual and
representative capacity as trustee of
The Elizabeth Ann Taisch Trust
dated March 10, 2000;
UK Star, Inc., a California
Corporation; and Does 1-10,

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Scott Johnson complains of Defendants Jack M. Lapidos, in individual and representative capacity as trustee of The Elizabeth Ann Taisch Trust dated March 10, 2000; Eric Mankuta, in individual and representative capacity as trustee of The Elizabeth Ann Taisch Trust dated March 10, 2000;

1 Steve Chao, in individual and representative capacity as trustee of The
2 Elizabeth Ann Taisch Trust dated March 10, 2000; UK Star, Inc., a California
3 Corporation; and Does 1-10 (“Defendants”), and alleges as follows:
4

5
6 **PARTIES:**

7 1. Plaintiff is a California resident with physical disabilities. Plaintiff is a
8 level C-5 quadriplegic. He cannot walk and also has significant manual
9 dexterity impairments. He uses a wheelchair for mobility and has a specially
10 equipped van.

11 2. Defendants Jack M. Lapidos, Eric Mankuta and Steve Chao, in
12 individual and representative capacity as trustees of The Elizabeth Ann Taisch
13 Trust dated March 10, 2000, owned the real property located at or about 972
14 Sutter Street, San Francisco, California, in November 2017.

15 3. Defendants Jack M. Lapidos, Eric Mankuta and Steve Chao, in
16 individual and representative capacity as trustees of The Elizabeth Ann Taisch
17 Trust dated March 10, 2000, owned the real property located at or about 972
18 Sutter Street, San Francisco, California, in February 2018.

19 4. Defendants Jack M. Lapidos, Eric Mankuta and Steve Chao, in
20 individual and representative capacity as trustees of The Elizabeth Ann Taisch
21 Trust dated March 10, 2000, own the real property located at or about 972
22 Sutter Street, San Francisco, California, currently.

23 5. Defendant UK Star, Inc. owned the Mithila Hotel located at or about
24 972 Sutter Street, San Francisco, California, in November 2017.

25 6. Defendant UK Star, Inc. owned the Mithila Hotel located at or about
26 972 Sutter Street, San Francisco, California, in February 2018.

27 7. Defendant UK Star, Inc. owns the Mithila Hotel (“Hotel”) located at or
28 about 972 Sutter Street, San Francisco, California, currently.

1 8. Plaintiff does not know the true names of Defendants, their business
2 capacities, their ownership connection to the property and business, or their
3 relative responsibilities in causing the access violations herein complained of,
4 and alleges a joint venture and common enterprise by all such Defendants.
5 Plaintiff is informed and believes that each of the Defendants herein,
6 including Does 1 through 10, inclusive, is responsible in some capacity for the
7 events herein alleged, or is a necessary party for obtaining appropriate relief.
8 Plaintiff will seek leave to amend when the true names, capacities,
9 connections, and responsibilities of the Defendants and Does 1 through 10,
10 inclusive, are ascertained.

11
12 **JURISDICTION & VENUE:**

13 9. The Court has subject matter jurisdiction over the action pursuant to 28
14 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
15 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

16 10. Pursuant to supplemental jurisdiction, an attendant and related cause
17 of action, arising from the same nucleus of operative facts and arising out of
18 the same transactions, is also brought under California's Unruh Civil Rights
19 Act, which act expressly incorporates the Americans with Disabilities Act.

20 11. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
21 founded on the fact that the real property which is the subject of this action is
22 located in this district and that Plaintiff's cause of action arose in this district.

23
24 **FACTUAL ALLEGATIONS:**

25 12. Plaintiff went to the Hotel in November 2017 and February 2018.

26 13. The Hotel is a facility open to the public, a place of public
27 accommodation, and a business establishment.

28 14. Guestrooms are one of the facilities, privileges, and advantages offered

1 by Defendants to patrons of the Hotel.

2 15. Unfortunately, none of the guest rooms at the Hotel are accessible to
3 wheelchair users.

4 16. Currently, there are no accessible guestrooms at the Hotel.

5 17. Paths of travel are also one of the facilities, privileges, and advantages
6 offered by Defendants to patrons of the Hotel.

7 18. However, the path of travel to the Hotel entrance required a person to
8 navigate steps for which there was no ramp.

9 19. Currently, the path of travel to the Hotel entrance requires a person to
10 navigate steps for which there is no ramp.

11 20. Plaintiff personally encountered these barriers.

12 21. These inaccessible conditions denied the plaintiff full and equal access
13 and caused him difficulty, discomfort, and embarrassment.

14 22. Plaintiff plans to return and patronize the Hotel but will be deterred
15 from visiting until the defendants remove the barriers.

16 23. The defendants have failed to maintain in working and useable
17 conditions those features required to provide ready access to persons with
18 disabilities.

19 24. The barriers identified above are easily removed without much
20 difficulty or expense. They are the types of barriers identified by the
21 Department of Justice as presumably readily achievable to remove and, in fact,
22 these barriers are readily achievable to remove. Moreover, there are numerous
23 alternative accommodations that could be made to provide a greater level of
24 access if complete removal were not achievable.

25 25. Plaintiff is deterred from returning and patronizing the Hotel because
26 of his knowledge of the barriers that exist. Plaintiff will, nonetheless, return to
27 assess ongoing compliance with the ADA and will return to patronize the Hotel
28 as a customer once the barriers are removed.

1 26. Given the obvious and blatant nature of the barriers and violations
 2 alleged herein, the plaintiff alleges, on information and belief, that there are
 3 other violations and barriers on the site that relate to his disability. Plaintiff will
 4 amend the complaint, to provide proper notice regarding the scope of this
 5 lawsuit, once he conducts a site inspection. However, please be on notice that
 6 the plaintiff seeks to have all barriers related to his disability remedied. See
 7 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
 8 encounters one barrier at a site, he can sue to have all barriers that relate to his
 9 disability removed regardless of whether he personally encountered them).

10
 11 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
 12 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
 13 Defendants.) (42 U.S.C. section 12101, et seq.)

14 27. Plaintiff re-pleads and incorporates by reference, as if fully set forth
 15 again herein, the allegations contained in all prior paragraphs of this
 16 complaint.

17 28. Under the ADA, it is an act of discrimination to fail to ensure that the
 18 privileges, advantages, accommodations, facilities, goods and services of any
 19 place of public accommodation is offered on a full and equal basis by anyone
 20 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
 21 § 12182(a). Discrimination is defined, inter alia, as follows:

- 22 a. A failure to make reasonable modifications in policies, practices,
 23 or procedures, when such modifications are necessary to afford
 24 goods, services, facilities, privileges, advantages, or
 25 accommodations to individuals with disabilities, unless the
 26 accommodation would work a fundamental alteration of those
 27 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 28 b. A failure to remove architectural barriers where such removal is

1 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
2 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,
3 Appendix “D.”

4 c. A failure to make alterations in such a manner that, to the
5 maximum extent feasible, the altered portions of the facility are
6 readily accessible to and usable by individuals with disabilities,
7 including individuals who use wheelchairs or to ensure that, to the
8 maximum extent feasible, the path of travel to the altered area and
9 the bathrooms, telephones, and drinking fountains serving the
10 altered area, are readily accessible to and usable by individuals
11 with disabilities. 42 U.S.C. § 12183(a)(2).

12 29. When transient lodging is provided, i.e., motels, hotels and similar
13 establishments, there must be a certain number of accessible sleeping rooms
14 or suites. 1991 Standards § 9.1.2.

15 30. Here, none of the guestrooms are accessible to wheelchair users.

16 31. There must be an accessible path of travel that connects all buildings,
17 elements and spaces on the same site. 1991 Standards § 4.3.2. To be
18 considered an accessible route, there cannot be a stair or step. 1991 Standards
19 § 4.3.8. Any such change in level measuring greater than ½ inch must have a
20 ramp or lift. *Id.* 2010 Standards § 303.4.

21 32. Here, the unramped steps are a violation of the ADA.

22 33. A public accommodation must maintain in operable working condition
23 those features of its facilities and equipment that are required to be readily
24 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

25 34. Here, the failure to ensure that the accessible facilities were available
26 and ready to be used by the plaintiff is a violation of the law.

27 35. Given its location and options, plaintiff will continue to desire to
28 patronize the Hotel but he has been and will continue to be discriminated

1 against due to the lack of accessible facilities and, therefore, seeks injunctive
2 relief to remove the barriers.

3
4 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
5 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
6 Code § 51-53.)

7 36. Plaintiff repleads and incorporates by reference, as if fully set forth
8 again herein, the allegations contained in all prior paragraphs of this
9 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
10 that persons with disabilities are entitled to full and equal accommodations,
11 advantages, facilities, privileges, or services in all business establishment of
12 every kind whatsoever within the jurisdiction of the State of California. Cal.
13 Civ. Code § 51(b).

14 37. The Unruh Act provides that a violation of the ADA is a violation of the
15 Unruh Act. Cal. Civ. Code, § 51(f).

16 38. Defendants’ acts and omissions, as herein alleged, have violated the
17 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s
18 rights to full and equal use of the accommodations, advantages, facilities,
19 privileges, or services offered.

20 39. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
21 discomfort or embarrassment for the plaintiff, the defendants are also each
22 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
23 (c).)

24 40. Although the plaintiff was markedly frustrated by facing discriminatory
25 barriers and this frustration possibly qualifies as an emotional distress injury,
26 even manifesting itself with minor and fleeting physical symptoms, the
27 plaintiff does not value this very modest frustration and physical personal
28 injury greater than the amount of the statutory damages.

PRAYER:

Wherefore, Plaintiff prays that this Court award damages and provide relief as follows:

1. For injunctive relief, compelling Defendants to comply with the Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the plaintiff is not invoking section 55 of the California Civil Code and is not seeking injunctive relief under the Disabled Persons Act at all.

2. Damages under the Unruh Civil Rights Act, which provides for actual damages and a statutory minimum of \$4,000.

3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

Dated: May 23, 2018

CENTER FOR DISABILITY ACCESS

By: 

Russell Handy, Esq.
Attorney for plaintiff